

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

BILLY F. LEMONS,

Plaintiff,

v.

MARTIN J. O'MALLEY, Commissioner of
the Social Security Administration,

Defendant.

CAUSE NO.: 3:21-CV-844-TLS

OPINION AND ORDER

This matter is before the Court on the Plaintiff's Attorney's Motion for an Award of Attorneys Fees Under 42 U.S.C. 406(b) [ECF No. 23], filed on April 10, 2024. The Commissioner filed a response on April 23, 2024, indicating he does not object to the motion. ECF No. 26. For the reasons stated below, the motion is GRANTED.

BACKGROUND

On March 10, 2017, the Plaintiff filed an application for disability insurance benefits, alleging disability beginning on March 10, 2017. AR 15, ECF No. 9. After the Administrative Law Judge issued an unfavorable decision, the Plaintiff filed a Complaint in federal court, and the Court reversed and remanded the case for further proceedings on August 5, 2020. AR 992. On January 14, 2021, the Court awarded the Plaintiff's attorney Equal Access to Justice Act (EAJA) fees in the amount of \$2,122.75. *See* ECF No. 29, 3:19-CV-905. Following a hearing on remand, the Administrative Law Judge issued another unfavorable decision, the Plaintiff filed the Complaint in this case, and the Court reversed and remanded for further proceedings. ECF No. 18. On September 14, 2022, the Court awarded the Plaintiff's attorney EAJA fees in the amount of \$1,836.37. Ultimately, the Social Security Administration awarded the Plaintiff past-due

benefits totaling \$106,532.00, twenty-five percent of which is \$26,633.00. *See* Notice of Award 3, ECF No. 24-3; Pl. Mot. 2, ECF No. 24.

In the instant motion, the Plaintiff's attorney requests an award of attorney fees under 42 U.S.C. § 406(b) in the amount of \$26,633.00. In the retainer agreement, the Plaintiff agreed to pay his attorney twenty-five percent of all past-due benefits. *See* Fee Agreement, ECF No. 24-1. Counsel represents that he will not request fees for work performed before the agency under 42 U.S.C. § 406(a). Pl. Mot. 5. Counsel represents that, if fees are awarded under § 406(b), he will refund to the Plaintiff the EAJA fees previously awarded as required by law. *See id.* at 7.

ANALYSIS

The Plaintiff's counsel, subject to refunding \$3,959.12 in EAJA fees, requests \$26,633.00 in attorney's fees pursuant to 42 U.S.C § 406(b). The Social Security Act allows for a reasonable fee to be awarded both for representation at the administrative level, *see* 42 U.S.C. § 406(a), as well as representation before the Court, *see* 42 U.S.C § 406(b). *Culbertson v. Berryhill*, 586 U.S. 53, 55 (2019) (quoting *Gisbrecht v. Barnhart*, 535 U.S. 789, 794 (2002)). Under § 406(b), the Court may award a reasonable fee to the attorney who has successfully represented the claimant in federal court, not to exceed twenty-five percent of the past-due benefits to which the social security claimant is entitled. 42 U.S.C. § 406(b)(1)(A); *Gisbrecht*, 535 U.S. at 792. The reasonableness analysis considers the “character of the representation and the results the representative achieved.” *Gisbrecht*, 535 U.S. at 808. Reasons to reduce an award include an attorney's unjustifiable delay or if the past-due benefits are large in comparison to the amount of time an attorney has spent on a case. *Id.* In addition, an award of EAJA fees under 28 U.S.C. § 2412 offsets an award under § 406(b). *Id.* at 796.

In this case, the requested amount in attorney's fees is consistent with the contingency agreement, and counsel will refund the \$3,959.12 in EAJA fees to the Plaintiff. Counsel

represents that 14.15 attorney hours and 8.0 non-attorney were spent in federal court on this case, resulting in an effective hourly rate of approximately \$1,600.00 per hour for attorney time and \$500.00 for non-attorney time. *See* Pl. Mot. 5. This hourly rate is reasonable given the contingent nature of this case, the favorable past-due benefit award, and the benefit the Plaintiff will receive in future payments. *See Long v. Saul*, No. 3:19-CV-155, 2021 WL 2588110, at *1 (N.D. Ind. June 24, 2021) (noting that an hourly rate of \$1,711.96 is within the range of rates approved by courts); *Koester v. Astrue*, 482 F. Supp. 2d 1078, 1083 (E.D. Wis. 2007) (collecting cases showing that district courts have awarded attorney's fees with hourly rates ranging from \$400 to \$1,500).

CONCLUSION

For the reasons stated above, the Court hereby GRANTS the Plaintiff's Attorney's Motion for an Award of Attorneys Fees Under 42 U.S.C. 406(b) [ECF No. 23] and AWARDS attorney fees under 42 U.S.C. § 406(b) in the amount of \$26,633.00. The Court ORDERS the Plaintiff's attorney to refund to the Plaintiff the total of \$3,959.12 in EAJA fees previously awarded in this case.

SO ORDERED on April 23, 2024.

s/ Theresa L. Springmann
JUDGE THERESA L. SPRINGMANN
UNITED STATES DISTRICT COURT